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IN THE

Supreme Court of the United States

October Term, 1978
No. 78-1577

SEARS, ROEBUCK AND CO., a corporation,

Petitioner,

vs.

COUNTY OF LOS ANGELES and CITY OF COMPTON,

Respondents.

Reply to Response to Petition for Writ of Certiorari.

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Appendix A. Commerce Clearing House List of States With "Free Port" Laws and an Analysis of the Provisions Thereof.

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Statute

California Revenue and Taxation Code, Sec. 319 2

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Respondents for the First Time Advance Arguments Which, if Upheld, Would Invalidate the "Free Port" Laws of Many States.

Some 37 states have enacted "free port" laws. Many of such laws grant an exemption for goods brought into the state from other states and foreign countries for shipment outside the state. A similar exemption in many cases is not accorded to goods produced in the state and subsequently shipped outside the state. See Appendix A for a Commerce Clearing House list of states with "free port" laws and an analysis of the provisions thereof.

In their Response to the Petition for Certiorari, respondents for the first time make clear their position, which, if upheld, would require that the "free port" laws described above be held invalid. In at least two ways respondents' position places the validity of such laws in jeopardy.

First, in the third paragraph on page 5 of their Response, attention is called to a bill introduced in the California Legislature which would extend the exemption to goods brought into the state from other states for shipment outside the state. Goods produced in the state would remain taxable even though shipped outside the state. Respondents categorically state that "* * * the new statute is invalid for the *same reasons* as the old one * * *." (Emphasis added.) If the proposed legislation would be invalid, as respondents maintain, then similar "free port" laws of numerous other states must also be invalid.

Finally, respondents' argument that the statute involved herein is invalid on the grounds that it interferes with Congressional power to levy tariffs is equally applicable to the "free port" laws of many other states. For example, X Company manufactures television sets in Oregon, most of which are shipped to other states for sale therein. Under Oregon's "free port" laws such locally produced merchandise is not exempt from Oregon's personal property tax. A competitor of X imports television sets manufactured in Japan which are stored in Oregon for subsequent shipment to other states. Such sets are exempt from the Oregon tax under its "free port" law. Assuming that the Oregon tax rate is 3½% (which respondents erroneously state is the rate in California*), then the goods imported into Oregon enjoy a 3½% advantage not accorded

*On page 8 of the Response it is stated that the tax rate for the year in question (1976) was approximately 3 to 3½%. However, California Revenue and Taxation Code, Sec. 319 provides for a 50% exemption for business inventories. This has the effect of reducing the tax rate to one-half of the rates stated in the Response, i.e., to 1½ to 1¾%. Furthermore, this rate is applied only to the goods actually in the state on March 1st, the state's tax date. Considering the normal "turnover rate" of petitioner's inventory, the effective rate of tax which should be used to determine the benefit of the exemption accorded certain imported goods may be as little as ½% or less rather than the 3 to 3½% as stated in the Response.

Even if Congress should endeavor to take varying state tax rates into account in fixing tariffs, which it never has done and probably never will do, an exemption from a tax of ½% or less is too insignificant to justify a difference in applicable tariffs.

to the goods locally produced in Oregon. If, as respondents insist, the California statute at issue here is invalid on the grounds that it interferes with Congressional power to levy tariffs, then the Oregon statute and similar statutes of numerous other states must be equally invalid.

Thus, the issue involved herein is not confined to the validity or invalidity of a California statute exempting certain imported goods. Instead, the grounds upon which respondents and the Court below rely to invalidate the California statute must inexorably lead to the conclusion that the "free port" laws of many other states are invalid as well. This indeed is a serious issue.

We respectfully urge the Court to grant the Petition for Writ of Certiorari and to set the fears of invalidity at rest.

Respectfully submitted,

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JUST PASSING THROUGH

Thirty-seven states and the District of Columbia now have "free port" laws designed to eliminate the possibility of double taxation of property stored in one state before shipment to another state. Generally these laws provide that no property tax will be assessed against tangible personal property which is shipped into the state and stored in a warehouse while awaiting further shipment to a destination outside the state.

In the absence of such laws, persons engaged in selling and shipping goods across state lines would be faced not only with the possibility of multi-state income and sales taxes, but also with the possibility of multistate property taxes.

It should be noted that some states provide specific exemptions from personal property taxes which are exclusive of the free port exemption.

For a summary of free port law requirements in each state, see the table below.

Chart of State Free Port Law Requirements

State	Must Goods Be Shipped in from Out of State	Must Storage Facility Be Public	Are Consignor or Consignee Prohibited from Owning Storage Area	Must Goods Be Destined for Out of State	Must Final Destination Be Specified	Must Goods Remain in Original Packages
Ala.[11]	No	No	No	Yes	Yes[9]	No
Ariz.	Yes	No	No	Yes	Yes[6]	No
Ark.	No	No	No	Yes	No[8]	No
Calif.	Yes[12]	No	No	Yes[12]	No	No
Colo.[8]	No	No	No	Yes	No	No
Conn.	No	Yes	Yes	No[1]	No	Yes
D. C.	No	Yes	No	Yes	No	No
Fla.	Yes	No	No	Yes	No	No
Ga.[10]	Yes	No	No	Yes	No	No
Ida.	No[4]	No	No	Yes	No[6]	No[4]
Ill.	No	Yes	Yes	No[1]	Yes	Yes
Ind.	Yes	Yes	Yes	Yes	Yes	Yes
Iowa	Yes	No	No	Yes	Yes[9]	No
Kan.	No	No	No	Yes	No[7]	No
Ky.[5]	No	Yes	Yes	No[1]	Yes	Yes

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State Free Port Law Requirements—Continued

State	Must Goods Be Shipped in from Out of State	Must Storage Facility Be Public	Are Consignor or Consignee Prohibited from Owning Storage Area	Must Goods Be Destined for Out of State	Must Final Destination Be Specified	Must Goods Remain in Original Packages
La.	Yes	No	No	Yes	Yes[8]	No
Me.	No	No	No	Yes	Yes	No
Mass.	Yes	Yes	Yes	No	No	Yes
Mich.[31]	No	Yes	Yes	Yes	Yes	No
Minn.	No	No[34]	Yes	Yes	No	Yes
Miss.	No	No	No	Yes	Yes[9]	No
Mo.	Yes	No	No	Yes	No[8]	No
Mont.	Yes	No	No	Yes	No	No
Neb.	No	No[14]	No	Yes	No	No
Nev.	Yes	No	No	Yes	Yes[9]	No
N. J.	No	No	No	No	No	No
N. M.	Yes	No	No	Yes	Yes[9]	No
N. C.	No[3]	Yes	Yes	No[3]	No	Yes
Ohio	Yes	No	No	Yes	No	No
Okla.	Yes	No	No	Yes	Yes[8]	No
Ore.	Yes	No	No	Yes	No[7]	No
S. C.	Yes	No	No	No	Yes[9]	No
S. D.[35]	No	No	No	Yes	No.[8]	No
Tenn.	Yes	No	No	Yes	Yes[9]	No
Tex.[36]	Yes	No	No	Yes	No	No
Utah	No	No	No	Yes	No	No
Wis.	No	No	Yes	No[1]	No	Yes
Wyo.	No	No	Yes	Yes	No[7]	No

[1] Only the property of residents must be destined for out-of-state shipment.
[2] Subject to a tax of 1½¢ on each $100 of fair cash value, in lieu of all other taxes.
[3] Property not destined for out of state must have been shipped in from outside the state.
[4] Personal property designated for reshipment outside of Idaho need not be stored in the original package. Property of a nonresident must be stored in the original package and must be shipped in from out of state.
[5] Assessed at 5% of actual value.
[6] Final destination must be specified by warehouse if known.
[7] Final destination must be specified by warehouse.
[8] If required to determine in-transit character.
[9] The exemption is granted property in transit whether the final destination was specified when transportation began or afterwards.
[10] Georgia provisions apply to property imported into the United States by waterborne commerce through any Georgia port. The provisions do not apply except to situs for taxation by political subdivisions of Georgia in which the port of original entry is located.
[11] Valid for not over 36 months following consignment or storage of the property.
[12] Only personalty shipped into California for transshipment outside the U. S. or shipped into California from outside the U. S. for transshipment outside California is exempt.
[13] Alcoholic beverages excepted.
[14] Warehouses must be licensed and regulated by the state.
[15] Must be shipped to final destination within 12 months of assessment date.
[16] May not be detained more than 9 months.

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